



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

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Department of Administration
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Banking & Financial Institutions

Ms. Annie Goodwin
Commissioner
Montana Division of Banking and Financial Institutions
PO Box 200546
Helena, MT 59620-0546

RE: The Secure and Fair Enforcement for Mortgage Licensing Act of 2008

Dear Commissioner Goodwin:

Original to Annie

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the SAFE Act) was enacted on July 30, 2008, as part of the Housing and Economic Recovery Act of 2008. The SAFE Act is designed to enhance consumer protection and reduce fraud by encouraging states and U.S. territories to establish minimum standards for the licensing and registration of certain mortgage loan originators and for the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) to establish and maintain a nationwide mortgage licensing system and registry for the residential mortgage industry.

Pursuant to our responsibilities under the SAFE Act, the U.S. Department of Housing and Urban Development (HUD) has conducted a preliminary review of the licensing and registration legislation adopted by your jurisdiction. In order to assist your jurisdiction's efforts at compliance, enclosed for your review is our side-by-side comparison chart of provisions in your statute that appear to be inconsistent with, or at a minimum raise questions regarding compliance with, the SAFE Act. This chart is not a determination of your jurisdiction's compliance with the minimum requirements of the SAFE Act. Rather, HUD has provided this preliminary review as a tool to help identify specific areas of your statute that may require legislative or regulatory changes or clarification. In connection with this preliminary review, HUD also notes that your statute authorizes the implementation of SAFE Act requirements through regulatory or administrative means. Therefore, a determination of compliance with the minimum provisions of the SAFE Act will require HUD review of those regulations or administrative actions.

In addition, HUD's proposed SAFE regulations were published in the Federal Register on December 15, 2009, for a 60-day comment period, a link for which is provided here: <http://www.hud.gov/offices/hsg/ramh/safe/safeprule.pdf>. This proposed rule provides a detailed interpretation of the SAFE Act's minimum standards that jurisdictions would be required to meet when registering and licensing loan originators. The Department specifically requests your comments on the proposed rule in accordance with the instructions provided in the preamble. Until these rulemaking procedures are complete through HUD's issuance of a final rule, these regulations are subject to change

and are not provided as a direct measure of your jurisdiction's current efforts at compliance.

In order to facilitate a faster response to your questions and concerns, the Department has assigned a SAFE Act Specialist to act as the primary point of contact for your jurisdiction. The specialist assigned to work with your jurisdiction is:

Kevin Stevens
Phone: (202) 402-4317
Email: Kevin.L.Stevens@hud.gov

Please feel free to give Kevin a call if you have any questions or concerns. In addition, you can provide the specialist with any information that you believe would be important for HUD's consideration in assessing your state's compliance with the SAFE Act.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Matchneer III', followed by a horizontal line and a small flourish.

William W. Matchneer III
Associate Deputy Assistant Secretary for
Regulatory Affairs and Manufactured Housing

Enclosure

MONTANA SAFE ACT LEGISLATION
January 15, 2010

#	MONTANA LEGISLATION 2009 Senate Bill 351	CORRESPONDING SAFE ACT & PROPOSED RULE LANGUAGE	HUD COMMENTS
1.	<p>M.C.A., Sec. 32-9-102. License requirement – registration. (1) Unless exempt under 32-9-104, a person may not act as a mortgage broker, mortgage lender, or mortgage loan originator with respect to any residential real estate located in Montana unless licensed under the provisions of this part.</p>	<p>12 U.S.C. § 5102 (3) LOAN ORIGINATOR (A) IN GENERAL.-The term "loan originator" (i) means an individual who- (I) takes a residential mortgage loan application; and (II) offers or negotiates terms of a residential mortgage loan for compensation or gain; . . . (8) RESIDENTIAL MORTGAGE LOAN . – The term "residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).</p> <p>Proposed Rule § 3400.103 Individuals required to be licensed by states. (a) Except as provided in paragraph (c) of this section, in order to operate a SAFE-compliant program a state must</p>	<p>While Montana's Definition of Mortgage Loan Originator includes offering or negotiating terms of a "residential mortgage loan," which term includes a loan secured by a dwelling or real property, Montana requires licensing of an originator with respect to only "residential real estate.". In effect, this would require licensing with respect to "real property" transactions only. The SAFE Act and HUD's proposed rule establish a licensing requirement that also applies to dwellings as defined in section 103(v) of the Truth in Lending Act.</p>

	prohibit an individual from engaging in the business of a loan originator with respect to any dwelling or residential real estate in the state, unless the individual first:	
<p>2. M.C.A., Sec. 32-9-104. Exemptions – proof of exemption.</p> <p>(1) The provisions of this part do not apply to:</p> <p>(a) an entity that is an agency of the federal, state, or municipal government; . . .</p> <p>(c) a person who offers, negotiates, or provides financing in conjunction with the sale of <u>real property owned by that person</u> . . .</p> <p>(f) a loan that is made by an entity to an employee of the entity if the proceeds of the loan are used to assist the employee in meeting the employee's housing needs;</p> <p>(g) an entity engaged solely in commercial real estate lending;</p> <p>(h) an entity qualified as a pension plan under 26 USC 401 if the plan makes residential mortgages only to the plan's participants;</p> <p>(j) a 501(c)(3) corporation, which is not otherwise engaged in or holding itself out to the public as being engaged in the mortgage loan business, that makes mortgage loans to promote home</p>	<p>Proposed Rule § 3400.103 Individuals required to be licensed by states.</p> <p>(e) A state is not required to impose the prohibitions required under paragraphs (a) and (d) of this section on the following individuals:</p> <p>(1) An individual who performs only real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the individual is compensated directly or indirectly by a lender, mortgage broker, or other loan originator or by an agent of such lender;</p> <p>(2) An individual who is involved only in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D);</p> <p>(3) A loan processor or underwriter who performs only clerical or support duties and does so at the direction of and subject to the supervision and instruction of an individual who is licensed and registered in accordance with paragraph (a) of this section or who is exempt under paragraph (e)(7) of this section;</p> <p>(4) An individual who only offers or</p>	<p>Only <i>individuals</i> are subject to the SAFE Act's licensing requirements. To the extent that MT applies these exemptions only to <i>companies</i> and not individuals, the exemptions provided in RI's law would not differ from the SAFE Act and HUD's proposed rule. However, these exemptions appear to be inconsistent with the requirements of the SAFE Act to the extent that they could also be read to exempt individuals from the SAFE Act's licensing requirements. The SAFE Act and HUD's Proposed Rule do not provide for such exemptions.</p> <p>Further, we note that Montana provides an exemption for a person who offers, negotiates, or provides financing in conjunction with the sale of <u>real property owned by that person</u>. The language of this exemption could be interpreted to allow an exemption to licensing to an individual real estate developer or investor who offers, negotiates or provides financing in conjunction with real property he owns or invests in and sells to others as a part of his business model. Montana's exemption</p>

<p>ownership or improvements for bona fide low-income individuals; . . .</p> <p>(m) a licensed certified public accountant or a licensed public accountant who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to providing public accounting services to the client unless the accountant is compensated by a mortgage lender, mortgage broker or mortgage loan originator or an agent of the mortgage lender, mortgage broker, or mortgage loan originator;</p>	<p>negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;</p> <p>(5) Any individual who only offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.</p> <p>(6) A licensed attorney who only negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; or</p> <p>(7) An individual who is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry, and who is an employee of</p> <p>(i) A depository institution;</p> <p>(ii) A subsidiary that is:</p> <p>(A) Owned and controlled by a depository institution; and</p> <p>(B) Regulated by a Federal banking agency; or</p> <p>(iii) An institution regulated by the Farm Credit Administration.</p>	<p>appears to be inconsistent with HUD's proposed rule, which only provides an exemption for individuals who offer or negotiate terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.</p>
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3.	<p>M.C.A., Sec. 6 Overall licensing requirements for mortgage brokers, mortgage lenders, and mortgage loan originators.</p> <p>(5) The provisions of this part apply to the activities of retail sellers of manufactured homes and recreational vehicles to the extent determined by the United states department of housing and urban development through guidelines, regulations, or interpretive letters.</p>		<p>The SAFE Act does not except from the licensing requirements the activities of retail sellers of manufactured homes and recreational vehicles, nor does HUD's proposed rule provide such an exception.</p>
4.	<p>Sec. 29 Mortgage call reports. <u>Each mortgage broker and mortgage lender entity shall submit to the nationwide mortgage licensing system and registry reports of condition, which must be in the form and must contain information that the nationwide mortgage licensing system and registry may require.</u></p>	<p>12 USC §5104(e). STATE LICENSE AND REGISTRATION AND ISSUANCE.</p> <p>"Each mortgage licensee shall submit to the NMLS reports of condition, which shall be in such form and shall contain such information as the NMLS may require."</p> <p>§3400.111(f), Proposed Rule, requires that the supervisory authority "require a loan originator to ensure that all residential mortgage loans that close as a result of the loan originator engaging in activities described in §3400.103(b)(1) are included in reports of condition submitted to the NMLS."</p>	<p>Montana requires mortgage brokers and mortgage lenders to provide reports of condition, rather than requiring reports from individual licensed loan originators. This appears to differ from HUD's proposed rule, which provides that states must require loan originators to ensure that all residential mortgage loans that close as a result of their loan origination activities are included in reports of condition submitted to the NMLS.</p>